

Service Date: August 9, 1995

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Applications)	UTILITY DIVISION
of Pacific Telecom, Inc. and US)	DOCKET NO. 94.10.44
West Communications for approval)	
to offer CLASS services.)	Order No. 5806c

FINAL ORDER

Background

1. On April 18, 1994, Pacific Telecom, Inc. (PTI) filed Tariff Advice No. 94-01 to introduce a new service offering called Custom Calling II. The filing was designated as Docket No. N-94-34. Collectively, most of the new features included in Custom Calling II are commonly referred to as Customized Local Area Signalling Services, or CLASS. On May 3, 1994, PTI submitted a revised Custom Calling II filing which contained several modifications and clarifications to its April 18 filing.

2. On August 31, 1994, US West Communications (USWC) filed proposed CLASS tariffs with the Commission. USWC supplemented its filing with a letter dated September 8, 1994. USWC's filing was originally designated Docket No. N-94-80. USWC revised its filing on March 3, 1995, to include CLASS promotions and to broaden its free Per Line blocking provision. USWC filed Tariff Transmittal 95-6 to request authority to set a monthly per usage maximum of \$6.00 for two CLASS services - Continuous Redial and Last Call Return. This filing was designated N-95-19. USWC also filed Tariff Transmittal 95-12 to request authority to add Caller Identification - Bulk to its CLASS offering. This filing was designated N-95-46.

3. Although PTI's and USWC's filings are somewhat different, Docket Nos. N-94-34 and N-94-80 were consolidated into Docket 94.10.44 to facilitate joint processing, and a joint hearing. Both USWC and PTI were granted interim approval to offer CLASS services (see Interim Order No. 5788 of Docket No. N-94-34 and Interim Order No. 5806b of Docket No. 94.10.44). The Commission also granted interim approval of USWC's filings designated N-95-19 and N-95-46.

4. PTI and USWC were the only parties to file formal testimony. Numerous individuals and organizations intervened in this Docket; many submitted written comments. The Montana Consumer Counsel (MCC) submitted data requests on PTI's testimony and filed a post hearing brief.

5. The technical hearing in this Docket was held in Helena on February 21, 1995. Additional public hearings were held in Helena, Billings, Missoula, Polson and Kalispell.

General Privacy Concerns

6. CLASS features provide telephone customers with enhanced telecommunications capabilities. For both PTI and USWC, CLASS revenues are expected to be well above the costs of providing the services, and should provide significant contributions towards the companys' revenue requirements. While there is strong demand for many CLASS features, some raise serious privacy concerns. The most controversial CLASS feature is Caller Name and Number Delivery, also known as Caller ID. The concerns about Caller ID and other CLASS services were recognized by the Commission and described in detail in Interim Order No. 5788. These concerns have also been expressed in letters to the Commission as well as by individuals testifying at the public hearings.

7. Many individuals, including law enforcement officers, strongly welcome Caller ID and the other CLASS services. Others, expressing legitimate privacy concerns, do not wish to have their name and telephone number transmitted each time a call is made from their phones. The Commission has considered these views and finds that the benefits of CLASS services outweigh the drawbacks as long as the CLASS offerings include safeguards to protect the vulnerable and provide customers with choices about the level of privacy they wish to maintain.

8. Two effective safeguards are aggressive customer education and Caller ID blocking. Both PTI and USWC have conducted extensive customer education campaigns to inform customers about how CLASS services (primarily Caller ID) change the balance of privacy between callers and called parties (see customer education sections of Interim Order Nos. 5788 and 5806b), and about the availability and use of Caller ID blocking. The companies provided extensive customer notice before and after implementation of the new features through bill inserts, newspaper and broadcast media and/or special mailings to their customers.

9. PTI's and USWC's CLASS offerings also include Caller ID blocking options which enable callers to stop their names and telephone numbers from being transmitted to recipients of their calls. Two blocking options are available - Per Call and Per Line blocking. On a per call basis, customers can dial a Per Call blocking activation code (*67) before dialing a telephone number. This prevents the caller's telephone number (and the associated name) from being delivered to the called party. The companies are both offering Per Call blocking at no charge.

10. Per Line blocking prevents caller number and name delivery for all calls made from that line, without dialing an activation code. While PTI is charging a monthly fee for Per

Line blocking, USWC is offering the service at no charge for first-time requests with a non-recurring charge imposed for subsequent requests. Both companies offer a waiver of Per Line blocking charges to certain social and law enforcement agencies (and, in PTI's case, to individuals sponsored by a recognized agency).

11. While blocking mechanisms allow callers the opportunity to retain anonymity in placing calls, they also potentially diminish the value of subscribing to Caller ID; as more people utilize the blocking mechanisms, Caller ID becomes less effective. However, the Commission finds the blocking mechanisms necessary to balance the interests of Caller ID subscribers with the interests of those with legitimate privacy concerns. Based on company forecasts, the Commission believes use of the blocking mechanisms will not significantly erode the value of Caller ID.

PTI's CLASS Offering - Commission Decision

12. PTI has become a leader in deploying new technology in Montana and is to be commended for being the first Montana utility to offer CLASS. CLASS services are available to all customers in PTI's Montana service area. However, the Commission is concerned about one aspect of PTI's CLASS filing - the decision to charge most customers for Per Line blocking. The Commission has received numerous letters and phone calls from customers who resent having to pay a monthly fee to maintain the same level of privacy they had before Caller ID. Many are from customers already paying to keep their names out of directories. Several of these customers testified at the public hearings.

13. PTI argues that there is no legal precedent supporting a calling party's right to be able to make calls anonymously. PTI contends the historical ability to complete calls anonymously was merely a shortcoming of the network and that Caller ID restores a balance between the interests of the called party and the calling party.

14. PTI recognizes that there are instances where revealing the caller's name and number may be in conflict with legitimate confidentiality interests. Accordingly, PTI offers free Per Call blocking, recognizing that all customers may occasionally have a need for confidentiality. In addition, Per Line blocking is being offered at no charge to agencies that routinely deal with sensitive matters. After reviewing the testimony from the Kalispell public hearing, PTI decided to also offer free Per Line blocking to individuals whose health and safety are deemed to be at risk, although certification of that risk is required from an "appropriate law enforcement or intervention agency."

15. PTI argues that Non-published and Non-listed number services have no bearing on Per Line blocking. According to PTI, the historical purchase of Non-published/Non-listed services, which control the availability of the customer's names and numbers to the public at large, does not automatically entitle the customer to make calls anonymously. PTI argues that there is a difference between the availability of customer names and numbers to the general public via published directories and directory assistance, and the availability to only those the customer chooses to call via Caller ID.

16. As further justification for its Per Line blocking charge, PTI explains that there is a cost associated with providing the service that should be the responsibility of those customers who subscribe to the service. The company believes that customers who desire this method of maintaining their calling anonymity should bear the costs.

17. In its post-hearing Brief, MCC argues that PTI's position ignores the legitimate interests of the calling party, and that the company should offer a more liberal form of free Per Line blocking. MCC recommends that the Commission require PTI to provide free Per Line blocking to its customers on the same "first time" basis as USWC.

18. The Commission agrees with MCC and finds PTI's argument regarding the evolution of anonymous calling irrelevant. Adequately maintaining the balance of privacy between callers and called parties is relevant. Regardless of the origin, customers have developed strong, though varied, expectations based on current and past practices, and have acted on those expectations. Customer expectations have been reinforced by telephone company actions to build trust.

19. The Commission believes that while Caller ID is a valuable enhancement to the phone system, its availability has spawned legitimate privacy concerns. Although these concerns are largely mitigated by the availability of Per Call and Per Line blocking, customers should not be required to pay to invoke either of these blocking options. Per Call blocking is currently free to anyone, but most of PTI's customers cannot receive Per Line blocking without paying a monthly fee.

20. The Commission commends PTI for responding to the compelling public testimony at the public hearings by expanding its free Per Line blocking offering, but directs the company to expand the free offering further. PTI should continue to provide Per Line blocking at no charge to law enforcement agencies, shelters for battered persons, government agencies engaged in confidential operations, and other similar agencies. In addition, PTI is directed to provide Per Line blocking to all other customers at no charge for initial requests. Any existing or new customer, including those who change their telephone number and/or service address should be able to receive the service for free upon request. PTI can impose a charge (either non-recurring or recurring) for customers who subscribe to Per Line blocking, request to discontinue the service, and subsequently re-subscribe. Customers who are concerned about the privacy impacts of Caller ID, including Non-published/Non-listed subscribers, should not be required to pay extra to maintain the

balance of privacy between callers and called parties that existed prior to the availability of Caller ID.

21. The Commission finds that according to information submitted by PTI, the foregone Per Line revenues will not reduce the financial viability of PTI's CLASS offering. The revenues from Caller ID alone are far more than adequate to cover the costs of providing both Caller ID and Per Line blocking. In addition, PTI should continue to provide handset stickers as directed in Interim Order No. 5788.

USWC's CLASS Offering - Commission Decision

22. The Commission finds that USWC's offering of CLASS services also provides valuable enhancements to the phone system. The Commission especially commends USWC's manner of offering Per Line blocking. However, the Commission is disappointed with USWC's limited deployment of CLASS in its service area. USWC is urged to closely monitor the market conditions in Montana to determine whether CLASS deployment in additional communities may be warranted.

23. USWC is required to file a report on or before June 1 of each year until CLASS is deployed in each of USWC's Montana exchanges. The report shall list both CLASS equipped exchanges and non-CLASS equipped exchanges in USWC's Montana service area including the number of access lines in each. The report shall explain why CLASS is not deployed in each exchange including the identification of any exchanges not technologically able to handle CLASS. The report shall also include the following information for each exchange not equipped with CLASS: 1) the forecasted cost of CLASS deployment; 2) the forecasted gross and net revenues that would result from CLASS deployment; 3) the level of forecasted revenue and/or other financial thresholds required before CLASS will be deployed; and 4) a schedule showing USWC's CLASS deployment plans.

Summary

24. The services included in PTI's and USWC's CLASS offerings will significantly enhance telephone service in Montana. For several years, the Commission has received, and still receives, numerous requests from Montana residents for these services.

25. Caller ID has been the source of much of the controversy surrounding CLASS. The Commission believes continued customer education regarding CLASS along with free Per Call blocking for all customers and free Per Line blocking for initial requests are appropriate responses to much of the Caller ID privacy concerns.

26. The Commission looks forward to the ubiquitous availability of CLASS features to all residents in Montana.

Procedural Objection

27. At the hearing PTI objected to the introduction by Commission staff of certain data responses into the record¹. PTI objected that it is a violation of due process for the non-party staff to enter evidence into the record.

¹

The Commission staff requested that the PTI responses to PSC data requests

1, 2, 3, 4, 6 and 7 be placed in the record. The Commission staff also requested that the US West responses to certain Commission data requests be entered into the record, along with a PTI response to a Montana Consumer Counsel data request. (TR. 9-10)

28. The Commission has discussed this objection in considerable detail in previous dockets and will not reiterate those discussions here. The commission incorporates by reference Order No. 5399b, && 8-23, Docket No. 88.11.53 and Order No. 5484k, && 15-20, Docket No. 90.6.39. In 1990, the Commission initiated a Notice of Inquiry to consider the numerous due process objections to the role of Commission staff in contested case proceedings. See Docket No. 90.7.44. As a result of this Inquiry the Commission concluded 1) that parties have a right to confront issues prior to decision and 2) the Commission has a special role as both a decisionmaker and a regulator with an independent interest in just and reasonable rates and adequate (including appropriate) service. See Order No. 5735d, && 3-10, Docket No. 93.7.29; Order No. 5684, Docket No. 90.7.44, and Notice of Commission Action, Docket No. 90.7.44, December 31, 1992.

29. The Commission staff has not pursued new issues through its data requests in this Docket. The requests were made to further Commission understanding of the basic issue in this Docket, raised by both PTI and USWC filings; what is the appropriate regulatory response to the offering of CLASS services in Montana, especially Caller ID and related services? Commission staff did not find it necessary to raise additional issues in this Docket. To the extent that PTI concludes that an additional has been raised inadvertently through the discovery process to which it has not had the opportunity to respond, it can inform the Commission on reconsideration and ask to reopen the hearing. The Commission believes, however, that PTI has had ample opportunity to offer evidence and argument on the basic issue. It is the Commission staff's responsibility to make sure that the record reflects a wide range of information necessary for the Commission to make an informed decision. Therefore, PTI's objection is DENIED.

CONCLUSIONS OF LAW

1. Pacific Telecom, Inc., and US West Communications provide regulated telecommunications services within the State of Montana and are public utilities under the regulatory jurisdiction of the Montana Public Service Commission. Sections 69-3-101 and 69-3-803, MCA.

2. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA.

3. The Commission has the authority to establish rates, tariffs and fares for the provision of regulated telecommunications service. Section 69-3-807(1), MCA.

ORDER

1. PTI is directed to revise its tariff within 30 days to comply with the findings contained in this order (see Paragraph 20). Commission staff is hereby authorized to review and approve PTI's revisions.

2. USWC's CLASS filing, as filed on August 31, 1994 (Tariff Transmittal 94-21, with revisions filed on March 3, 1995), is APPROVED on a final basis.

3. USWC is directed to comply with the findings contained in Paragraph 23.

4. USWC's filing in Docket No. N-95-19 is APPROVED.

5. USWC's filing in Docket No. N-95-46 is APPROVED.

6. Docket Nos. N-94-34, N-94-80, N-95-19, N-95-46 and 94.10.44 are hereby closed.

Done and Dated this 1st day of August, 1995, by a vote of 3-2.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

NANCY McCaffree, Chair

DAVE FISHER, Vice Chair
(DISSENTING OPINION ATTACHED)

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner
(DISSENTING OPINION ATTACHED)

BOB ROWE, Commissioner
(WRITTEN OPINION ATTACHED)

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision.
A motion to reconsider must be filed within ten (10) days. See
38.2.4806, ARM.